

Pyrrhus Reference Dec 7 10 90

File No. 24-10

Serial Nos. 1-4

1900-11

GENERAL AND REVENUE SECRETARIAT.

(Legislation)

113

Part A: Manuscript
for June 1894

Serial Nos. 1-4

Contents

To the J.A. Anderson Esq. Mysore No. 11586.
the 12th December 1890

Forwards a copy of the Mysore gazette
and ward bill and requests him to obtain
the sanction of the Government of India
for the bill being passed as law.

16

G.R.S. 11]

1907-11

GENERAL AND REVENUE SECRETARIAT

(Legislative)

NOTES.

File. No. 24 of 1906

FILE HEADING.

A draft Regulation to Consolidate and amend the Law relating to Guardians and Wards

From				
No.		Dated		Received
Diary No.	}	Enclos.	Spare Copies.	}

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

Leg file 26-13

7

Mysore Government, General and Revenue Secretariat.

Legislative Department.

Note.

Subject. Amendment of the existing law relative to the custody and guardianship of Minors, etc.

Extract from notes by the 2nd Councillor. in Judicial File No.151 of 1902-03, re. the investiture of certain Subordinate Judges with power to dispose of applications under the Rules for the custody and guardianship of minors, etc:-

"The law on the subject as it stands at present does not seem quite satisfactory. May I ask Mr. Chandrasekhara Iyer to take it up as early as possible?"

(Initialled) C.S. 11-4-03.

2

The Dewan's orders thereon:-

"Yes. This is a very necessary action and should be taken promptly."

(Initialled) P.N.K.
14-iv-03

Copies of Acc. VIII of
1890 not procured
till 2. Sept. 1903

2

3

3 I submit herewith a draft Regn to enshrine and amend the law relating to Madras and Mad.

4 It is based for the most part on the Madras & Mad Act, VIII of 1890.

An amendment containing the proposed changes is put up.

5 The Statement of Objects & Reasons explains the necessity for the measure, its scope, as also the few particulars in which it departs from the Indian model.

6 A separate Regulation in regard to Lunacy & Lunatics' hospitals ^{also} ready and will be submitted presently.

Ms. Chandrasekhar

21-11-03

H. V. Rangiah

26/11/03

The 2nd Committee

26.11.03

In Secy's Committee opinion, please see at the end of "Statement of Objects and Reasons."

all

12.12.1903

31/1/04

A Regulation to consolidate and amend the law relating
to Guardian and Ward.

STATEMENT OF OBJECTS AND REASONS.

The law at present in force in regard to the custody and guardianship of minors consists of the Rules sanctioned by the Government of India (Foreign Department) in Notification No. 75, dated the 25th April 1872 (with the exception of Rule 22, which applies to lunatics, idiots and other individuals incapacitated by natural infirmity, the provisions relating to minors). These Rules proceed more or less on the lines of (and were probably based on) Acts XL of 1858 and XX of 1864 relating to minors in Bengal and Bombay respectively. These and a number of other local and special Acts were finally repealed in 1890 by Act VIII of 1890, which provided a law of Guardian and ward applicable as far as possible to all classes of Her Majesty's subjects in British India, to whatever creeds or races they might belong.

The Rules of 1872 being found defective in several respects, it is proposed to replace them, so far as they relate to the guardianship of minors, by a Regulation based on the Indian Act VIII of 1890, which is more comprehensive than the Rules aforesaid and comprises many matters not provided for by them.

The subject of the adjudgment of persons to be lunatics and of the appointment of guardians of their persons and managers of their estates, is one which it is found cannot conveniently be dealt with as part of a Regulation concerning the guardianship of minors, and is reserved for separate consideration. In the meantime, so much of the Rules of 1872 as relates to lunatics has to be expressly saved, and this is done in the Schedule.

2. Most of the changes made in the provisions of Act VIII of 1890 in the process of adaptation are verbal alterations that are obviously required. The few that need explanation are referred to below.

References to Courts of Wards and Chartered High Courts have been omitted throughout.

Section 3, clause (1). The definition of "minor" here given differs from the corresponding definition in the Indian Act, a definition based on the Indian Majority Act which is not in force in Mysore; but adheres to the provisions of the existing law under which every person is to be "held to be a minor who has not completed the age of 18 years." The Government do not consider that there is anything to be gained by departing from the existing provision of law, and making a distinction (as in the Indian Majority Act) between the age of majority for a minor of whose person ~~the~~ property a guardian has been appointed by a Court of Justice before the minor has attained the age of 18 years, and the age of majority for all other persons. Compare also the definition in section 3 of the Indian Succession Act, and in section 3 of the Mysore Registration Regulation, 1903.

Vide Rule 2 of the Rules of 1872.

Section 3, clause (4). The definition of "District Court" given in this clause is taken from the Succession Certificate Regulation, VII of 1901.

So also is section 4, which provides for Courts inferior to a District Court being invested with the functions of a District Court under the present Regulation. The existing Rules, it may be remarked, allow of a Subordinate Judge being empowered to receive and dispose of applications for the appointment of guardians. (Vide proviso to Rule 5).

Section 52 of the corresponding Indian Act has been omitted as relating to the Indian Majority Act.

Loeg file 924 173-14

The schedule provides for the repeal (among other enactments) of section 464 of the Civil Procedure Code because the amendments of the Code effected by the present Regulation do contemplate the applicability of Chapter XXXI to "Wards of Court."

Section 53, clause E of Act VIII of 1890 has likewise been omitted, as section 464 of the Civil Procedure Code as amended by it is inapplicable for the reasons, firstly that Chapter XXVIII of the Code (relating to suits by or against Foreign and Native Rulers) ^{has been} ~~was already~~ omitted when the Code was applied to Mysore in 1884, and secondly that there are no local laws in force relating to suits by or against minors or persons of unsound mind. The original section 464 of the Code is also inapplicable in view of the fact that the present Regulation does contemplate the applicability of Chapter XXVIII to "Wards of Court;" and hence is included in the Schedule for repeal along with the second para of section 443.

Ms Chandrasekhara

20-11-03

5-7

The present Regulation is in my opinion suitable except that I have doubts as to the portion relating to European British Subjects. This is an important measure - if approved by the Dewan the draft may be published before long. It is not a great

Submitted to
Dewan
with note about
procedure
H. B.
213

Agree -
9/11/03
11-12-03
G. B. Chandrasekhara

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No.

19. The Draft Regulation was published in The Mysore Gazette of 18.2.04 and in 2 subsequent issues

~~26/8/02~~

J. Ins 84400 ~~26~~

The subject of this draft regulation was under discussion at the Representative Assembly during the Session of 1905. It was then ordered that the draft Reg should be referred to the Public for opinion.

11 Draft letter to the West Coast academy
Draft with
7/12/5 7/12/5
B. James M. James
6. Jenson
12-65

12 ~~Amplitude~~
? ~~Kip~~ ~~SN~~
7/12/05 7/12/05

I

The Registrar of the Chief Court of Mysore
71636 dated the 9th Dec. 1905.

Forwards copies of draft of
Guardian & Wards Regulation for favour
of the opinion of the judges of the Chief
Court.

From The Same officer.

Letter no: 7417/382 Dated ¹³the 14th April 1906.

Forwards the opinion of the judge
of the lower court on the draft of the

General and Revenue
Secretariat.

File No. ~~40~~ of 1903-54

24 of 1910-11

8

NOTES

Flag 2

of the Lyndon or ans and War's Resultat two

Inspector No. 1 with a Corporal Cook of the Indiana

and Wards Regulation embodying the changes

proposed by the judges of the Chief Court

24.4.06
Secretary

Fluoride

June 11/5
snow to the top of the mountain.
5/11
5/11

14 The inghe Circle for General -
U.S. Marine Corps
1918

The suggestion of the Chief Court (maybe adopted
 but as there has been a moral
 change in the Constitution of the Chief
 Court since those suggestions were
 made, it ~~is~~^{is} desirable to inquire
 annually whether the present
 Chief Court have now adopted
 or altered to make

J. A. [Signature]
 27 Feb 07

U.C.T 56

28.2.07

16 Invoiced to the Receiver of the
Ches. Cant according to

201207

McDonald
no. 9 to fur

Serial
No.

ho 5447
258

The case is in the
1st Committee
27/4

C421
3407

Submitted to Secy
for

17 The opinions of Nanyun dayya &
Krishna Rao T.T. are put up. The
Chief Judge has nothing to add. The
file is retransmitted.

24-4-7

Rep. Chief J.

18 The opinions of Mr Justice Krishna
Rao except that in regard to some
British subjects may be adopted
of the Draft Regulation published
as usual in the Gazette for public
criticism.

19 The draft Regl. has already been
published in the Gazette, vide note at top
p. 6. Further publ. seems unneces-
sary.

20 The Regl. may either be taken up
at a Council meeting (the matter not
being very contentious), or reserved for
introduction before the new Legislative
Council.

21 May be taken up at a Council meeting
if the Dewan approves.

4552
25/4/07

22 Yes

23 Yes

GPB-10,000-181-07

(with a
routine
note)

Aug 7th - 10

10

23 I am not in favor of omitting
in our Regulation those provisions
of the British Indian Act which
relates to European British subjects
Phm

The Indian Legislature had, I
believe special reasons for enacting
those provisions. The principles of
English law and the rules of
procedure observed by the English
Courts in the matter of the appoint-
ments powers and duties of guardians

have

11
have undergone some changes in Eng

- land since the passing of the
guardianship of Infants, Act 1886

(49 and 50 Victoria, Chapter 27), and

the Indian Legislature has embodied

these changes in the Guardian and

Wards Act VIII of 1890 of ^{the} Governor-

General in Council. To place the

European British Subjects in ~~British~~

~~British~~ Mysore on the same footing

as the European British Subjects in

British India, we should, I think

follow the British Indian act as
closely

² Aug 72-10

~~10~~ 15

closely as possible, otherwise the
courts in Mysore will find it
difficult to apply to European
British Subjects the statutory
provisions contained in the
guardian ship of Infants act,
1886, and may have to apply
those principles of English law
which the English Courts used
to apply to them before the
passing of the said act.

Nov

14

Nor do I see any objection to the definition of a European British Subject including a Christian of European descent. In the first place in the case of persons of European extraction, not being British Subjects but professing the Christian religion, it was probably considered that much difficulty would be experienced by Indian Courts in

Aug 7 74-10

15

in ascertaining the personal law
applicable to each such person
especially in the matter of
the rights of guardianship of
their minor children Secondly,
persons domiciled or resident
in British India, it was
perhaps presumed, would
have no objection to the
law applicable to European
British Subjects being made
applicable

115

applicable to them also so long
as they were subject to the
jurisdiction of the Indian
courts. Upon considerations
such as these, probably, the
Indian Legislature felt justi-
fied in including persons
of this class within the defini-
tion of European British
Subjects for the purposes of
the Guardian and Wards Act
VIII of 1890.

4¹ deg 724 -40 116

I am therefore
of opinion that the alterations made
in red ink in the corrected copy, in
the original sections 3(7), 5, 6, 15
and 17 (4) of the draft, are not
desirable.

(2) I have no objection to the
alterations made in the original
sections 14 (a) (i) and 14 (b).

(3) The red ink alterations in the
original section 21 makes the meaning
of the section somewhat obscure.

I would suggest the following
amendment

176

amendment being made viz:—

No minor shall be appointed
or declared under this Regulation
to be guardian of the person
of another minor except his
own wife or child, or where
he is the managing member
of an undivided Hindu
family the wife or child
of another minor member of
that family

(4) To the original Section
26 I would add a sub section
as

as follows —

" (3) A guardian of the person —
 " appointed or declared by the
 " Court unless he is the Deputy
 " Commissioner or is a guardian
 " appointed by will or other —
 " instrument shall not, without
 " the leave of the Court by which
 " he was appointed or declared,
 " cause or procure or abet the
 " marriage of his ward "

13

(3) Sub Section (2) of the new
 section 44 will then have to be
 altered as follows:—

Amg

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" Any person appointed or declared
" guardian by the Court. causing
" or procuring or abetting the
" marriage of his ward, in
" contravention of the provi
" - sions of Section 26, shall
" be liable, by order of the
" Court, to fine not exceeding
" one thousand rupees or to
" imprisonment in the Civil
" jail for a period which may
" extend to six months. "

(16)

I consider no further
alteration can be made. The Regu
lation can only impose conditions
on

6. Dec 7 24-10 ~~10/10~~

on the guardians appointed or declared
by the Court and punish them for
a breach of those conditions. It
cannot affect third persons who
are not subject to the jurisdic-
tion of the Court. Such persons
can only be reached, I submit,
by means of the Criminal law if
it can be made to contain a pro-
vision rendering their acts in rela-
tion to a ward of the Court.

14
punishable.

Wm. H. Law
King's Cross
just
H. H. Law

26/3/07

Aug 7th - 18

24

24. I wish to add that it is unnecessary to make separate provisions for European British subjects in this Regulation, as Mr Justice Krishna Rao has expressed a strong opinion that we should not make any alterations from the provisions of the Indian Act. It seems to me incumbent on our Legislature at least to understand the special reasons and the particular necessity of inserting exceptional clauses in Regulations, before transplanting them wholesale from the British Indian Acts.

25. Where the person and property of persons who are not domiciled in the State are concerned the recognised rules of Private International Law come into operation and I believe they will have to be applied in Mysore as much as they have

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22

to be applied elsewhere. The
 main principles applying to this
 subject seem to be the following
 the Churf. Power vests in the Guardia
 appointed by the Court of the Minor's
 Council, and he is to be recognised
 generally in all States; but his
 power has to be exercised with
 the sanction of the Court within
 whose jurisdiction the property (espe-
 cially when immovable) is situated.
 Courts of the place where the Minor
 for the time being resides have
 also a certain degree of power to
 deal with his ~~care~~ custody and
 education, which varies in differ-
 ent States and according to various
 authorities

~~The~~ The Indian Act does not
 supersede these rules and ~~seems~~
~~to supersede them~~ ^{draft} our Regulation does
 not propose to do so either. If

question crops up in which

day 7-24-10 (27)

the interests of a minor who is
a European British subject are to
be guarded in accordance with
the law of his domicile. There will
be nothing whatever against our
Courts recognising the powers
of his guardians appointed by
British Courts. Section 5 of the draft
clearly recognises the existence
of this power, as well when
~~is~~ a ~~Hindu~~ European British sub-
ject, as when he may be a
Hindu Mahomedan or Parsi

16
27 There is another considera-
tion against British subjects be-
ing separately mentioned in this
Regulation. I believe that Indian
Councils Act gives the Council of
India power to legislate, so as to
affect ~~the~~ European British sub-
jects so far as they are to be
subject to the laws of the place

25

No: 617/



PATAN BHAVAN,
BANGALORE.

16th June 1907.

From the Secretary, H.V. P. Venkanna Rao & Co. to the Secretary, Patan Bhavan, Bangalore.

I forward herewith for your perusal a draft of a Regulation to consolidate and amend the law relating to Guardian and Ward in Mysore. The law at present in force in regard to the custody and guardianship of minors consists of the Rules sanctioned by the Government of India (Foreign Department) in Notification No. 75 dated the 25th April 1872. With the exception of Rule 22 which applies to lunatics, idiots and other individuals incapacitated by natural infirmity, the provisions relating to minors. These Rules are more or less on the lines of and were probably based on Acts XL of 1858 and XX of 1864 relating to minors in Bengal and Bombay respectively. These and a number of other local and special acts were finally repealed by Act VIII of 1890. *in British India*

2. The Rules of 1872 being found defective in several respects, it is proposed to replace them, so far as they relate to the guardianship of minors, by a Regulation based on the Indian Act of 1890. which is more comprehensive than the

17

Rules of 1872 and comprises many matters not provided for by them.

3. The adjudgment of persons to be lunatics, and the appointment of guardians of their persons and managers of their estates, are subjects which, it is found, cannot conveniently be dealt with as part of a Regulation concerning the guardianship of minors, and are therefore reserved for separate consideration. In the draft Regulation so much of the Rules of 1872 as relates to lunatics has therefore been expressly saved

4. Most of the changes made in the provisions of Act VIII of 1890 ~~in the process of adaption~~^{to} ~~are~~^{mere} verbal alterations ~~that are obviously required~~. References to Courts of Ward and Chartered High Courts have been omitted. The definition of "minor" differs from the corresponding definition in the Indian Act, but adheres to the definition contained in the Rules of 1872. The definition of "District Court" in clause 3, sub-clause 4, is taken from the Succession Certificate Regulation VII of 1901. So is clause 4 of the draft Regulation.

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by the
of the
see

5. It is proposed to place the Bill before the Legislative Council. and if you have no objection, I shall give permission to its being introduced.

stated
adaptation
Act to the conditions
of the country

18

8-0 July 1907 No 394
No 4721 dated 7.07

J 144



BANGALORE.

To Secretary
12/7/07
13/7
put up to file please
13/7
11 July 1907. from Mr
Z. P. Nennie, Mr. B. B. B.
President in Mysore
Mr. V. A. Mesther
Mr. B. B. B.

I am desirous to acknowledge with thanks the receipt of your D.O. letter No. 617, dated 16th June 1907, forwarding a draft of a Regulation to consolidate and amend the law relating to Guardians and Wards in Mysore.

2. Mr. Williams sees no objection to the proposed legislation as a whole, but there is a point which he will be glad if you will kindly consider before sending the Bill to the Legislative Council for discussion.

19 As you will observe the definition of "minor" in the draft Regulation differs from the corresponding definition contained in the British Indian Act. It is true that the Indian Majority Act of 1875 is not in force in Mysore, but the discussions in the Legislative Council when the draft Bill was under consideration in 1875 give reason to suppose that the Government of India think it desirable to fix the age of majority at 21 wherever possible. I am therefore to invite your attention to these discussions which are published in the supplement to the Gazette of India of 6th March 1875) in order that the advisability of amending the definition of the term "minor" on the lines of the British India Act

may

may be further considered.

Q 3. In any case Mr. Williams thinks that as regards European British subjects, the age of majority should be 21 as in British India. The Rules of 1872 did not apply to them, and the proposed ^{introduce} definition of "minor" would, if adopted, a material change in respect of their legal status. It would be awkward to have European British subjects in Mysore, to whom the provisions of the Indian Majority Act, 1875, extend as a personal law, subject to different treatment in Mysore Courts.

Q

4. The expression "Chapter XXVIII" occurring in the penultimate line of the statement of Objects and Reasons attached to the draft Regulation appears to be a clerical error for "Chapter XXXI"

Yours sincerely,

J. R. Ramesh

20

9

V. P. Madhava Rao Esquire, C.I.E.,

Dewan of Mysore.

NNM

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~~28~~ Under the Rules ^{now} in force, ~~under the~~ the Succession Regulation and the ~~major~~ Registration Regulation, the period of minority extends only to the completion of 18 years of age - The majority Act in force in British India introduced so far back as 1875 fixes the ordinary age for majority at 18 years and though more than 30 years have since elapsed, the provision remain unaltered apparently ~~because~~ ^{any} the necessity for ~~the~~ alteration has not manifested itself - In the case of minors under the jurisdiction ~~of the~~ Court of Wards or in respect of ~~whose~~ person or property a guardian ~~was~~ is appointed or declared by a Court of Justice, the period of minority ~~was~~ is prolonged to the 21st year as large estates involving important interests ~~were~~ ^{are} being constantly brought under the management of the Court of Wards and it ~~was~~ ^{is} deemed inadvisable to trouble the management to young natives just at the age of 18 (Vide the Genl. Govt. Speech p. 335) - But the conditions in our

21

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State are not the same and the ne-
cessity for modifying the existing law
on the subject does not seem to exist

²⁴ In the case of European
British Subjects ^{however} to whom the Rules
do not apply, the modification sug-
gested in the Residency letter may
seems be adopted. In that case, the
definition of a minor will have to
be amended as follows: —

" Minor means a person who
has not completed the age of 18 years
provided that every European
minor European British Subject or
whose person or property, or both
a guardian has been or shall be
appointed or declared under the
Regulation before the minor has
attained the age of eighteen years
shall, notwithstanding anything
contained in the Succession Regulation
Act (No. 8 of 1885), or in any other
enactment, be deemed to have
attained his majority when he shall
have completed his age of 21 years
and not before."

Vide Sec 52 of the
Guardian & Wards Act
and sec 3 of the majority
Act.

? Is not 21 the
limit for all
European British
Subjects?

22

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~~37~~ If the above be approved, a
draft to the Residency will be put up.

Secy) 30.9.07 -

2000

K. H. S. S. S.

Received from
the Secretary
for further information
as regards the necessity
for amending the definition
of "minor" in the case
of European British
Subjects.

the Secretary
for the Residency
has been informed
that the definition
of "minor" in the case
of European British
Subjects is to be
amended.

(P. J. O. S.)

23

This does not
appear to be correct
vide d. 27 Dec 3
P. H. 2 M. Act 1875
J. S. A.
L. S. File No.

10-11-31
of 1903-04

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Subd for order.

Flag Y.
(Page 336 of the
Book of Indian
Sanction 8/6-3-1875)

38 All European British Subjects whether
having an Indian domicile or not attain
majority for general purposes when they com-
plete the twenty-first year; but with respect
to the property taken by way of succession
all the communities to whom the Indian
Succession Act IX of 1865 applies attain
majority on the completion of the Eighteenth
year.

Flag 0

39 The rules of 1872 relating to the Custody
and guardianship of minors which is at
present in force in the State and which the
draft Regulation is proposed to supersede
do not apply to European British Sub-
jects. The latter seem therefore to be
governed by their personal law. The
draft Regulation, on the other hand
makes rules in respect to the European
British Subjects also as is done in British
India but does not adopt the definition
of minor as defined in the Indian
Majority Act. ~~Thus the age of the~~
~~minor of a European British Subject, of~~
whose person or property a guardian has
been appointed under sec: 5 of the draft
Regulation, the age of minority will cease
when

Reg 11

24

how?

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the man completes 18 years of age according to the Mysore Law, whereas ~~it intends~~ according to the British Law the minority will cease on his completing the twenty-first year.

~~23~~ No reasons are given in the draft statement of objects and reasons for including the European British Subjects under the scope of the proposed Regulation. The late 2nd Councillor Mr C. Sreenivasa Iyengar, remarked ^{on 11-12-03} as follows with regard to the draft Regulation: -

"The proposed legislation is in my opinion suitable except that I have doubt as to the provisions relating to European British Subjects. * * * *"

~~24~~ The Chief Court who were constituted in 1906 disapproved of the provisions relating to European British Subjects as being unnecessary. When the draft Regulation was again referred in 1907 when there was a change of personnel in the Chief Court, Mr Justice P. S. Krishna Rao expressed ~~that the persons~~ the desirability of retaining the provisions relating to European British Subjects, while Mr Justice Nanyundarra was of opinion that it

Page 7 of the
Office note

Hag R.

25

Pages 11-21 of the
Office note

n 22 - 25 - do

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it was unnecessary to make any separate provisions regarding them as they would be governed by their personal law wherever they go. We further questioned the power of the State to legislate measures affecting European British subjects as such a power is vested solely in the Governor-General in Council.

35 In these circumstances it is a matter for consideration whether the provisions in the draft Regulation regarding the European British subjects should be retained. If they are ordered to be retained, the definition of the word minor in the draft Regulation should be amended as suggested by the Resident in para 3 of the F.A. Resident's letter dated the 11th July 1907 (No. 4721), in which case, the following definition, which was drafted by the Legislative Department in 1894 may perhaps be adopted:—

"Minor in the case of a Hindu or Mahomedan means a person who has not completed the age of eighteen years and in the case of European British subjects or other classes a person

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who has not ~~admitted~~ reached the age of majority according to the law to which he is subject."

~~36~~ In case it is decided to omit the provisions relating to European British subjects, there seems to be no necessity to amend the definition of minor as given in the British Indian Act.

SN
9/12/07 ~~37~~ On further consideration it seems to me that it is not necessary to amend the definition of "minor" at all.

(I. L. R. 7 All 490) ~~38~~ European British Subjects temporarily residing in India whose domicile is in England. The law applicable to them is the English law.

~~39~~ European British Subjects domiciled in British India. The Indian majority Act applies to them.

~~40~~ Under the Indian Majority Act, ~~re that Act~~ Sec 1, that Act is applicable "so far as ^{regards} subjects of Her Majesty to the dominions of Princes and States in India in alliance with Her Majesty".

~~41~~ The law seems ^{to have been} made already so far as regards European British.

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subjects are concerned and I do not know what more is to be done.

Secy

3. 1. 08

K. M. Ramesh
Secy

I am sorry I have not had + do not now have sufficient time to read the Bill carefully though I was prepared to see it in the first instance.

42 These questions of detail may be discussed after the Bill is introduced into the Leg. Council.

43 This is a judicial measure, & hence has to be introduced by the Dist. Councillor. I believe

Secy to the Dist. Council

Taken for discussion
8542
27.10.1908

44 After Govt approval of the measure Govt support that the Bill be entrusted to the Govt Advocate or to a non-official Member like Mr. Nappha or Mr. Ranganathan to put through. [There is an advantage in giving non-official members opportunities to gain experience in such matters & otherwise to distinguish themselves.] This measure is entirely non-contentious.

29 Nov 08

32

45 The Bill may be placed before the Legislative Council

K. S. Ramanathan
Secy

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- 46 The Dewan will be obliged if the draft of a
copy of the order of 11-7-07 is put up for
the
X Mettina 15-3-08
- 47 To Hordet for a draft of the same
17308

24

I beg leave to append a note in explanation of the remarks made by the Residency on the Draft Regulation in their letter last received.

The Residency letter refers to two points viz., (1) the advisability of changing the limit of minority from 18 to 21 in particular cases-- by adopting the definition of "minor" in the British Indian Act and (2) in any case retaining the higher limit so far as European British subjects are concerned.

It is convenient to take up the consideration of the latter first

The statement in the Residency letter that the Indian Majority Act applies to European British Subjects in Mysore as a personal law does not appear to be quite correct, so far as those who ^{have} not adopted an Indian domicile are concerned. This has been so held in I.L.R 7 All 490: and the construction is justified by the preamble to that Act and the marginal heading to Sec. 3. The consequence is that in British India, as well as in Mysore, European British Subjects who have not adopted an Indian domicile are governed by their own personal law, which fixes the limit of minority at 21.

But assuming that this interpretation of the Indian Majority Act is incorrect (for we find that clause 2 of Sec. 1 and the very general words used in clause 1 of Sec: 3 present some difficulties) and that the Residency view is right, then we must hold that clause 1 of Sec: 3 of the Indian Majority Act applies to European British Subjects, in which case also the limit of minority would be 21, and our legislature could not alter this limit, because the Indian Majority Act applies as a personal law to His Majesty's subjects even in Native States. Such a reservation, by the way, is also necessary to exclude the case of Native subjects of His Majesty to whom the

30

the Indian Majority Act applies as personal law in our State.

§31 The result is that whatever view we may adopt about the scope of the Indian Majority Act itself, the limit of minority applicable (in British India) to European British subjects not domiciled in British India is 21, and if we are to legislate we will have to adopt the same, as, even if we could enact otherwise, the change is not likely to be welcomed by that community, the more so, as in the neighbouring British Provinces they are allowed to be guided by their own personal law.

§4.37 On this view, the following amendment of the Draft Regulation would be necessary, viz.,- the addition of the following after the definition of the word "minor" in Sec: 3:- "Nothing in this definition shall apply to European British Subjects or affect the provisions of the Indian Majority Act, 1875."

§5.12 If to avoid all these complications, it is considered desirable to omit all references to European British Subjects, then the draft will have to be altered as follows:-

31 Insert the following after sub section 2 of section 1. viz.. "provided that nothing in this Regulation shall be deemed to apply to European British Subjects or affect the provisions of the Indian Majority Act 1875."

§6.38 The Regulation will then be wanting in completeness, but this is not ^{an} unusual consequence in legislating on matters affecting personal status.

§7 As regards the other suggestion of the Residency, viz., that

Reg 7 24.7.18 = 114/136

that the limit of minority may be raised to 21 for the purposes of the Regulation, it has to be pointed out that to make a distinction now as has been done in Sec: 3 of the Indian Majority Act between minors whose estates --- come under the management of guardians appointed by Court and those whose ^{estates} ~~properties~~ do not-would, it appears to me, be very inexpedient. as the law in Mysore has been uniformly settled in one way. and the expression " majority" is generally understood in this State to mean completion of the 18th year. The discussions in the Legislative Council when the Indian Majority Act was under consideration show that the higher limit was fixed with special reference to big Zemindaries and Landed Estates which are not to be found in Mysore.

~~98~~ I have put up a draft adopting the suggestion of the Residency so far as European British Subjects not domiciled in British India (or Mysore) are concerned.

The draft explains itself.

32 ~~57~~ One word is necessary about European British Subjects domiciled, - not in British India but in Mysore. Such persons would come under the ordinary provisions of our Act and the limit applicable to them would be 18 and not 21. This is analogous to the British Indian Law according to which European British Subjects who have adopted an Indian Domicile are governed by clause 2 of section 3, except in regard to the very rare cases which fall under clause 1.

4/5

Stirling Murray

Secretary

70

33

Serial
No.

On further consideration, I think the best course is to exclude European British subject from the purview of the Bill, since the latter is intended merely to replace the ~~the~~ ^{the} ~~Law~~ ^{Law} of 1872, which ~~excluded~~ ^{excluded} this class of persons from their ~~role~~ ^{role} ~~from~~ ^{from} operation. The result will be merely (1) that European British subjects whose domicile is in British India will continue to be governed by the Indian Majority Act, 1855 and (2) that ~~those~~ ^{those} whose domicile is elsewhere will be governed by their personal law, as regards the age of majority. This, in fact, is the existing state of things & will continue unaffected of the change proposed by me is adopted. In ^{view} effect to this, the following words have to be added to Sec. 1(2) of the Bill "but shall not apply to European British subjects therein?" ~~Other~~ ^{Other} consequential changes ~~may~~ ^{may} have to be made; but this will be investigated after the main change is approved.

I agree with the Hon. Secy that it is inadvisable to ~~make~~ ^{make} any changes in the

Serial
No.

up of majority for the subjects of the State
& others from whom the new degree is to be

P.S. The Assistant Secretary with pleasure receives the letter
to the President on the above lines.

K. S. Pandey

62. I have perhaps revised draft
as directed.

8/5/04

Secretary

63. Subd for app (to be done
thru 22 cr)

8.5.04

64. If as suggested by the Secretary
we ~~be~~ expressly except Euro-
pean British Subjects, we will
be avoiding a difficulty and
leave things to be as they were
under the rules which this
regulation is meant to dis-
place. But I am not sure
that this would be desirable
Instead of excluding the European
British Subjects, I would suggest the

Serial
No.

alternative of omitting all reference to them, leaving such exceptional cases as may arise concerning European Br. subjects to be dealt with under the Regulation in so far as it is applicable to them and with such limitations as the Courts would have to introduce in accordance with the recognised rules of Private International law. If the Regulation is declared to be altogether inapplicable to them, our Courts will be precluded from applying any of its remedial measures for the benefit of European British Minors.

~~65.7.8~~ Yet cases may conceivably arise where such application would be eminently desirable and even necessary. The Regulation does not affect the status or contractual capacity of a minor in any degree at all. Its main object is to give the minor and his estate such protection as may

How, if the Regulation contains no specific provisions for E.B. min.

85

Serial
No.

be necessary to conserve his interests. The definition given in the Regulation merely serves the purpose of limiting the class in whose favour ^{it} ~~the~~ provisions can be invoked ~~persons~~ ~~person who is below 18~~ it does not necessarily follow that for other purposes, a person above 18 is ~~not~~ always minor. Chapter II of the Regulation deals with the ~~assessing~~ ~~and~~ declaration of guardians. Chapter III of duties rights and liabilities of guardians, and Chapter IV of the mode of ^{enforcing} ~~executing~~ orders of Courts, appeals & such other matters. Unless therefore we have a ~~leg~~ general law like the Indian Majority Act, the limiting of minority to 18 years in this Regulation would have only a very restricted operation. If

36

Serial
No.

the Hon'ble the Resident Con-
siders that European British
Subjects require the protection
of this Regulation for a longer
period than 18 years, we may
perhaps
1 alter the definition so as to
make them minors till they
pass twenty one, otherwise
there seems no harm in keep-
ing a general definition for
all Subjects. In fact, I think this
would be the simplest and most
satisfactory course.

~~Big~~ How questions concerning ap-
pointment and power of guar-
dians will be dealt with in
the Courts ~~is~~ may be ~~found~~
found in standard books &
applied by the Courts when such
questions actually arise for
decision. (e.g. Westlake on
Private International Law -
3rd Edn PP 48 &c on the subject of
Foreign Guardianship. Harton's
Conflict of Laws: 2nd Edn Chapter on
Guardianship.) I am inclined
to think that the reason for mentioning
European British Subjects specially

The simplest
way of meeting
this would be
to define a
minor as a
person who has
not attained
the age of 18, or
if he is not
domiciled in
Mysore, who
has not attained
majority acco-
rding to the law to which
he is subject

I do prefer this
method in all cases -
in this way the local
law & usage will be improved
upon in these cases ~~discussed~~
by the Courts ~~the~~
the Hon'ble the Resident

Serial
No.

in the British Act is that in virtue of the power vested in the Legislative Council of India, all British Subjects whether European or not would come under the general provisions of law, and it was deemed expedient to maintain certain special features of the law to which Europeans are usually subject. That difficulty does not arise as alysoe, and so it is unnecessary to mention anything about European British Subjects, who may be safely ~~left~~ left to the operation of the rules that would have to be applied to the case of foreign minors.

34

Serial
No.

~~In accord~~

~~67~~ In accordance with this view, I would suggest that the 3rd paragraph of the draft letter be altered as follows.

"

During

the Darbar on further Consideration are inclined to omit all reference to British subjects in this Regulation. ~~In the first place, then~~ the object of the Regulation being merely to empower Courts to afford a certain measure of protection to the interests of minors, its provisions cannot have any effect in determining the status or capacity of such persons, which will ~~have~~ ~~to be deduced by applying the rule of pri~~ be governed by the persona law applicable to them in accordance with the principles recognised in Private International law. The same rules will become applicable for the purpose of affording them the protection of the provisions of this Regulation, in so far as

39

Serial
No.

as such protection may become necessary on account of their sojourn in the State or having property there. It is believed that the result will be to save for the protection of these minors all the laws to which they are subject by reason of their domicile, subject only to such exceptions (if any) as may be established by recognised authorities."

H. V. Ramchandrarao
(Secy)
19/5/29

Dr. J. A. S. S. S.

871-5-005

may be altered

1. Para 3 as suggested by the 2nd Committee ~~is~~ 2/15
adopted.

(2) As to the question whether the age of majority should be 18 or 21, under this Regulation I would prefer that the matter now be of an open mind and have the question discussed in the Legislative Council - There is much to be ascertained the limit being placed at 21.

Thos. J. S. S. S.

40

deg 7m - 10 (48)

Submitted to His Highness.

67

I submit for information the papers relating to the draft Regulation to consolidate and amend the law relating to Guardian and Wards in Mysore.

(2.) The subject has been under consideration from the year 1903, and the draft Regulation with a statement of objects and reasons was forwarded to the Hon'ble the Resident with the late Dewan's D.O. letter No. 617 dated 16th June 1907.

(3.) In the First Assistant Resident's D.O. No. 4721 dated 11th July 1907, it was stated that the Resident did not see any objection to the proposed legislation as a whole, but suggested that, before sending the bill to the Legislative Council, the question of fixing the age of majority at 21 instead of at 18 may be further considered, at any rate in regard to European British subjects.

(4.) In the draft reply which I now submit for approval, it is proposed to leave the question of fixing the age of majority at 18 or 21 to the Legislative Council, and to omit all reference in the bill to

(Vide office notes)

S

41

Draft for approval

Reg 7 24-10-19

to European British subjects. There is much to recommend the higher limit of age, and, though this may not be quite in accordance with common usage, the Legislative Council may be disposed to ^{let for} improve upon such usage, as far as it may lie in the power of Government to do so, by availing themselves of opportunities presented by minorities which have to be provided for by Courts. The effect of the omission of reference to European British subjects is explained in the Second Councillor's note dated 19th May 1909. and in para 3 of the draft reply.

para 3 of draft reply

(5.) The draft of the proposed reply may be approved. If the Resident has no further objection, the bill will be placed before the Legislative Council in due course.

See.

W. J. J. J.
9 June 1909

42

(50)
Reg 7 M-10

Record of Cases submitted for the Orders
of His Highness the Maharaja.

Subject.



1048

Draft of a D.O. reply to the Residency
in regard to the draft Regulation to
consolidate and ^{amend} the law relating to
Guardian and Wards in Mysore.

Order.

70. Approved

KKH

28/6/09

43

Secy
29/6/09

dy 7m-10 (51)
D.O. No 125/1600k

Jank View "
Yelwal Road,
Mysore, Mysore.

29th June 1909.

From Mr. Deven to Mr. J. Gordon in Mysore
dy 1

My dear Sir,

I am sorry there has been some
delay in replying to Mr. Rennie's D.O. let-
ter No.4721 of the 11th July 1907 relating
to the draft of a Regulation to consolidate
and amend the law of Guardians and Wards in
Mysore.

2. In regard to the suggestion made
by the Hon'ble Mr. Williams in para 2 of the
above letter, that, in view of the opinions
expressed at the discussions^x in the Supreme
Legislative Council when the Indian Major-
ity Act, 1875, was under consideration, the
limit of Minority may be raised from 18 to
21, I find that the special provision in
clause 1 of Section 3 of that Act fixing
the higher limit was enacted with special
reference to minor proprietors of Zamindaris
and big landed Estates, such as do not exist
to any large extent in Mysore. The law here
appears to be well settled, and the adoption

Reg 7 M-4 (52)

of the suggestion referred to would probably result in the introduction for the first time into our law of a distinction between the limit of minority applicable to those of whose person or property a guardian is appointed by the Court and that applicable to persons for whom such a guardian is not appointed. The Durbar will however keep the question open for the Legislative Council.

3. Turning to the next suggestion of Mr. Williams regarding the age of majority applicable to European British subjects in Mysore, the Durbar on further consideration are inclined to omit all reference to British subjects in this Regulation. The object of the Regulation being merely to empower Courts to afford a certain measure of protection to the interests of minors, its provisions cannot have any effect in determining the status or capacity of such persons, which will be governed by the personal law applicable to them in accordance with

the

45

Reg 7-24-10
(53)

the principles recognised in Private International law. The same rules will become applicable for the purpose of affording minors the protection of the provisions of this Regulation, in so far as such protection may become necessary on account of their sojourn in the State or having property there. It is believed that the result will be to save for the protection of these minors all the laws to which they are subject by reason of their domicile, subject only to such exemptions (if any) as may be established by recognised authorities.

46

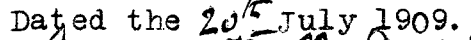
4. A copy of the draft Regulation further amended as above is enclosed for the information of the Hon'ble the Resident. The verbal error pointed out in the statement of objects and reasons has been rectified.

hee.

Yours sincerely,

sd) T. Ananda Row

T.B. Copeland Esqr., I.C.S.,
First Assistant to the Hon'ble
the Resident in Mysore.



K.M.

Serial
No.

Do. no. 125 of the 29th June 09, relating to
the draft of a Regulation to consolidate
and amend the law of ~~guardian~~
and Wards.

From the F.A. to the Resident in
Mysore, Do. no. 4765 of 20th July 09.

Acknowledges the receipt of
the above Do. and states that the
Resident does not see any objection to
the draft being laid before the Leg
Council.

Submitted for orders. The Bill may
also be included in the statement of
business to be conducted in the en
suing Leg Council meeting.

M.H.
23-7-09

Leave may be taken to
introduce the bill at the next meeting.
Orders have to be passed as to who is to be
in charge of the Bill which I believe
was drafted by W.C. G.

24/7/09

S.D. Singh

Secy

Serial
No.

Being a Judicial matter, it has to be taken charge of by the Controller in charge unless specially assigned to another member. Bills pertaining to the Dewan's debts, & which he cannot introduce, are usually sent - are sent to the ^{people} Secretary. *NSP [Signature]*
24-7-09
Decision 27.11

24/7/09

I do not see any necessity ~~of it~~. I think I have enough on hand and this may well be taken up by the Secretary. But if the Dewan prefers, I shall have no objection to do so myself. *AK Mangunegara*

25/7/09

Decision

1742
26/7/09

SH
26/7/09

49

75. If information is too much trouble I will report the duty. Mr. Chundrasekhara - take it up. *[Signature]*
26/7/09

Key 7 26-10. (55)

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

J 2607

Letter no 4443 dated 11/4/10
258

From the Registrar Chief
Court

States that the number
of applications made to the
several Courts in the State
for the Certificates of
administration under the
rules relating to the custody
and guardianship of minors
for the past 5 years is 112.

Subv.

This information seems
to have been called for in
connection with the ~~Bill to~~
~~amend the Mysore~~
~~Government Savings Bank~~
~~Act of 1874~~. The file
is under submission with
the Asst. Secy.

16/4/10 19/4/10

This information
was called for in connect
with the ~~file~~ ^{file} ~~case~~ ^{case} ~~now pending~~
~~before the Executive Comm~~
~~tee in the matter of~~
~~revising the Court fees~~
~~on orders of Courts appointing~~
~~guardians of minors~~
~~under the~~
~~provisions of the~~
~~Act of 1874~~

~~in connection~~
~~with the~~
~~Ward Bill~~

50

T D P. P. P. P.
with the

N. B. — Should routine notes be written on small
slips, the notes must be copied or slips
pasted on this form.

Subd to Asst Secy

No. Registrars file is

now pending before the Executive

Comm. No 2576/10

heard from the

Secy & C. P. P. P.

20/4/10 S. P. P. P.

6246
25-5-10
C. 4/3
58
Extract from the Proceedings of the 250th Meeting

788 of the Council of His Highness the Maharaja,
held at Bangalore on the 19th May 1910.

57

X. Subject.-(Clause ii of the Schedule).

~~788~~ Retention or otherwise of the provision in the schedule
to the draft-Guardian and Wards Bill ~~repealing~~ repealing
Article 9 of Schedule I of the Court Fees Regulation, III
of 1900.

Opinion of the Council.

60 Since under the draft Guardian and Wards Bill no certificates or guardianship will be given, the provision in the Court Fees Regulation to levy Court Fees on such certificates will cease to have any application. Article^x 9 of Schedule I of the Court Fees Regulation may, therefore, be repealed.

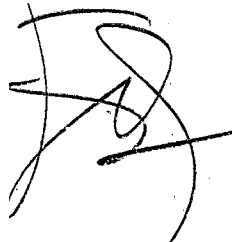
x Flag E

(sd) J Anandakaz

Dewan of Mysore

Extrad.

CS Balasundaram
Mg Secretary to Govt-



52

leg 7 m m

(60)

Submitted to His Highness.

78

The Schedule to the draft Guardian and Wards Bill which is now before the Legislative Council provides for the repeal of Article 9 of Schedule I of the Court Fees Regulation 1900. The effect of this will be that no Court fees will in future be realised when a guardian is appointed for a minor.

(2) The Council has considered the question whether this loss of revenue should be agreed to by retaining the provision to repeal Article 9, and is of opinion that the Article in question should be repealed. Under the draft Guardian and Wards Bill no certificates of guardianship will be given, and there is therefore no reason to levy Court Fees.

53

(3) It is understood that no Court Fees are levied in such cases in British India. The revenue from this source in Mysore during the past 5 years is reported to have amounted to Rs.1,008.

(4) The opinion of the Council may be accepted.

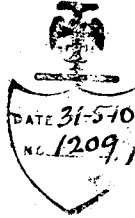
182
25/51

Substantiated
24 May 22

54

leg 94 m. 10

Record of Cases submitted for the Orders
of His Highness the Maharaja.



Subject.

Retention or otherwise of the pro
vision in the Schedule to the draft
Guardian and Wards Bill repealing
Article 9 of Schedule I of the Court
Fees Regulation III of 1900.

m. 915

Order.

(80) KRM
2/6/10

Secy
3/6/10
3/6/10

Secy
6/6/10

Secy
7/6/10

Secy
7/6/10

54-55

deg File No. 24 of 1910-11 (152)

Serial
No.

813 Subd. leave was taken to introduce
the Bill at the meeting of the Legislative
Council held on the 12th Sep 1909 and
the Bill was introduced at the meeting
held on the 18th Jan 1910. When it was
referred to a select committee for
consideration and report. The select
Committee's report was presented to the
Council at the meeting held on the
~~18th~~ 22nd Nov 1910. When it was
adopted ~~with~~ by the Council with a minor
alteration. The sanction of the
Govt of India has had to be obtained ~~before~~
the Bill being passed into law.
B. Submitted with a draft letter to the
2nd Subd. for approval.

Copies of the Bill as
re sent to the Secretary
of the Govt of India
for their consideration
and approval.

3 copies sent
10/12/10

56

20/12/10
SV (11)
8/12/10

Draft typed
at me

Draft typed at me

20/12/10
SV (11)

Draft may be approved
(2) paragraph 5 (1) of the
draft is based on last

leg

File No.

24 of 1910-11 (633)
15 of 1910-11

Serial
No.

Do. letter to the Rensancy

15/12/10 S. Srinivasan

~~Dewan the 2nd~~

85. Draft appd by 2nd

Subd to Dewan

9307

16.12.10

18/12/10

S. Srinivasan

86. ((Draft approved by Dewan) (KVL)

87. Issue of Balaramundana for

Sum
31/12/10

57

9/12/10

S. S.

19/12/10

1 Pol. 596 of 23/12/10 to the J. A. Resident
forwarding a copy of the Guardians & W.
Bill and requesting sanction of the Govt
of India for its being passed into law

No 965 dated 18th Feb. 1911

From the F. A. Resident in Mysore

Informs that the Governor General in
 Council has accorden his consent
 to the draft Bill on the usual
 understanding as to the retention by
 him of the power and authority
 vested in him by virtue of Article 19
 of the Instrument of Transfer
 Submitted for information

86. This will have to be taken up at the next^o Legislative Council meeting for being finally passed into act (58)

20/2/11

McCl

87 3/8
L

Subd to 2nd CVJ Dewan
for wife

22/2/11

~~St~~ ~~University~~

[Handwritten signature]

2572/11

St. Clair & Co. & Co.
St. Clair & Co.
St. Clair & Co.

613

6284

Leg File No. 24 of 1910-11

(65)

Serial
No.

89. The Bill was finally passed by the
Legislative Council at the meeting held
on the 27th April 1911. Sanction of H H
the Maharaja has now to be obtained for
its promulgation as law. Submitted with
a copy of the Bill for the Dewan's signature
as required by Rule 52 of the Legislative
Rules.

7KS/25
28/4/11
SN(11)
28/4/11

29/4/11
S. Srinivasan

See

90: Dewan through 2nd

29/4/11

29/4/11

29/4/11

457

59

11435
3.5.11

Dec 27-10-11
Submitted to His Highness.

H
81
The Guardian and Wards Bill which has been
before the Legislative Council since September 1909 has
been sanctioned by the Government of India (Residency
letter No.965 dated 18th February 1911) and has been
finally passed by the Legislative Council on the 27th
April 1911. I now solicit sanction to the bill being
promulgated as law. It is to come into effect from the
1st July 1911.

ku
Pranabendra
L. Nayak

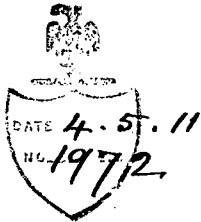
60

day 2 m-10 (65)

Record of Cases submitted for the Orders
of His Highness the Maharaja

Subject.

Promulgation of the Guardian
and Wards Bill as law.



Order.

92 Sanctioned

KRW

9/5/11

673

67

day

13/5/11

13/5/11

A. R. R. R.
19/5/11

13/5/11

13/5/11 93 288 morder 28/5/11
13/5/11

3⁰ NA
[Print without any
correction]

Copy as sent to Rev.

Copy as sent to Rev.
with ~~2-10-1917~~
June 1917

LEGISLATIVE DEPARTMENT.

The Guardians and Wards Regulation 190 .

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63

38/12/11

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THE SCHEDULE.—ENACTMENTS REPEALED.

19 K.
25/12/11

DRAFT

REGULATION NO. OF 190 .

A Regulation to consolidate and amend the law relating to Guardian and Ward.

Whereas it is expedient to consolidate and amend the law relating to guardian and ward His Highness the Maharaja is pleased to enact as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Regulation may be called the Guardians and Wards Regulation, 190
 (2) It extends to the whole of Mysore ~~and~~.
 (3) It shall come into force on the first day of 190

2. (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Regulation ; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Regulation or to the corresponding portion thereof.

Definitions.

3. In this Regulation, unless there is something repugnant in the subject or context,—

- (1) "minor" means a person who has not completed the age of eighteen years ;
 (2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property ;
 (3) "ward" means a minor for whose person or property, or both, there is a guardian ;
 (4) "District Court," subject to the provisions of section 4 of this Regulation, and to the provisions of section 12 of the Mysore Chief Court Regulation, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge.
 (5) "the Court" means the District Court having jurisdiction to entertain an application under this Regulation for an order appointing or declaring a person to be a guardian ; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides ;
 (6) "Deputy Commissioner" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Deputy Commissioner in any local area, or with respect to any class of persons, for all or any of the purposes of this Regulation ;
 (7) "European British subject" means an European British subject as defined in the Code of Criminal Procedure ; and includes any Christian of European descent ; and
 (8) "prescribed" means prescribed by rules made by the Chief Court under this Regulation.

4. (1) The Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Regulation, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Regulation upon the District Court, and the provisions of this Regulation relating to the District Court shall apply to such an inferior Court as if it were a District Court :

Provided that an appeal from any such order of an inferior Court as is mentioned in section 47 shall lie to the District Court, and not to the Chief Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Regulation from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

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(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

- (a) by the father of the minor, or,
- (b) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, nothing in this Regulation shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

- a) appointing a guardian of his person or property, or both, or
- b) declaring a person to be such a guardian, the Court may make an order accordingly

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Regulation.

8. An order shall not be made under the last foregoing section except on the application of—

- (a) the person desirous of being, or claiming to be, the guardian of the minor, or
- (b) any relative or friend of the minor, or
- (c) the Deputy Commissioner of the district or other local area within which the minor ordinarily resides or in which he has property, or
- (d) the Deputy Commissioner having authority with respect to the class to which the minor belongs.

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. (1) If the application is not made by the Deputy Commissioner, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint, and stating, so far as can be ascertained,—

- (a) the name, sex, religion, date of birth and ordinary residence of the minor;
- (b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;
- (c) the nature, situation and approximate value of the property, if any, of the minor;
- (d) the name and residence of the person having the custody or possession of the person or property of the minor;
- (e) what near relations the minor has, and where they reside;
- (f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Deputy Commissioner, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

11. If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

- Procedure on admission of application.*
- (a) to be served in the manner directed in the Code of Civil Procedure on—
- (i) the parents of the minor if they are residing in Mysore,
 - (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
 - (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
 - (iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and
- (b) to be posted on some conspicuous part of the Court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the Chief Court under this Regulation, thinks fit.

12. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Hearing of evidence before making of order.

14. If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself, and shall report the case to the Chief Court, and the Chief Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

Simultaneous proceedings in different Courts.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child has, by will or other instrument to take effect on

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her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

17. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but, other things being equal, if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

18. Where a Deputy Commissioner is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Appointment or declaration of Deputy Commissioner in virtue of office.

19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person—

(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person; or

(b) subject to the provisions of this Regulation with respect to European British subjects, of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor.

Guardian not to be appointed by the Court in certain cases.

CHAPTER III

"DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS."

General.

20. (1) A guardian stands in a fiduciary relation to his ward, and save as provided by the will or other instrument, if any, by which he was appointed, or by this Regulation, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

21. A minor is incompetent to act as guardian of any minor, except his own wife or child, or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

Capacity of minors to act as guardians.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward the Government, by general or special order, directs.

Remuneration of guardian.

23. A Deputy Commissioner appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matter connected with the guardianship of his ward, be subject to the control of the Government or of such authority as the Government, by notification in the official Gazette, appoints in this behalf.

Guardian of the Person.

24. A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

25. (1) If a ward leaves or is removed from the custody of a guardian or his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. (1) A guardian of the person appointed or declared by the Court, unless he is the Deputy Commissioner or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Regulation been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

29. Where a person other than a Deputy Commissioner, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be; describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand; or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

- a) that a sale shall not be completed without the sanction of the Court;
 - b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Regulation by the Chief Court, directs;
 - (c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;
 - (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.
- (4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Deputy Commissioner, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

34. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Deputy Commissioner, he shall,—

a) if so required by the Court, give a bond as nearly as may be in the prescribed form, to the Judge of the Court, to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(d) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward, as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

36. 1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of

what the guardian has received in respect of the property of the ward, and may recover, in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure, as amended by this Regulation.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

38. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :—

- (a) for abuse of his trust ;
- (b) for continued failure to perform the duties of his trust ;
- (c) for incapacity to perform the duties of his trust ;
- (d) for ill-treatment, or neglect to take proper care, of his ward ;
- (e) for contumacious disregard of any provision of this Regulation or of any order of the Court ;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward ;
- (g) for having an interest adverse to the faithful performance of his duties ;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court
- (i) in the case of a guardian of the property, for bankruptcy or insolvency ;
- (j) by reason of the guardianship of the guardian ceasing or being liable to cease, under the law to which the minor is subject :

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Regulation or not, shall not be removed—

- (a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or
- (b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Deputy Commissioner and the Government approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of authority of guardian.

41. (1) The powers of a guardian of the person cease—

- (a) by his death, removal or discharge ;
- (b) by the ward ceasing to be a minor ;
- (c) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person, or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit ; or,
- (d) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so, by his ceasing to be so in the opinion of the Court.

2) The powers of a guardian of the property

- (a) by his death, removal or discharge
- (b) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

Appointment of successor to guardian dead, discharged or removed.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

43. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Deputy Commissioner who is, as such, a guardian.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for removal of ward from jurisdiction.

Penalty for contumacy.

45. (1) In the following cases, namely:—

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

46. (1) The Court may call upon the Deputy Commissioner, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Regulation and treat the report as evidence.

Reports by Deputy Commissioner and subordinate Courts.

(2) For the purpose of preparing the report the Deputy Commissioner or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.

Orders appealable.

47.—An appeal shall lie to the Chief Court from an order made by a District Court,—

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or,
- (b) under section 9, sub-section (3), returning an application.
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or,
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,
- (e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or
- (f) under section 32, defining, restricting or extending the powers of a guardian; or,
- (g) under section 39, removing a guardian; or,
- (h) under section 40, refusing to discharge a guardian; or,
- (i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order; or,
- (j) under section 44 or section 45, imposing a penalty.

48 Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Regulation shall be final, and shall not be liable to be contested by suit or otherwise.

Finality of other orders.

49. The costs of any proceedings under this Regulation including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the Chief Court under this Regulation, be in the discretion of the Court in which the proceeding is had.

Costs.

50. (1) In addition to any other power to make rules conferred expressly or impliedly by this Regulation, the Chief Court may from time to time make rules consistent with this Regulation,—

Power of Chief Court to make rules.

(a) as to the matters respecting which, and the time at which, reports should be called for from Deputy Commissioners and subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a) (b), (c) and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians;

(f) as to the inspection of those statements and accounts by persons interested;

(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Deputy Commissioners, have been appointed or declared by the Court; and,

(j) generally, for the guidance of the Courts in carrying out the purposes of this Regulation.

(2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

51. A guardian appointed by or holding a certificate of administration from a Civil Court under any enactment repealed by this Regulation shall, save as may be prescribed, be subject to the provisions of this Regulation, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

Applicability of Regulation to guardians already appointed by Court.

52. Chapter XXXI of the Code of Civil Procedure shall be amended as follows, namely:—

Amendment of Chapter XXXI of the Code of Civil Procedure.

A.—To section 440 of the said Code the following shall be added, namely:—

If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after

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hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so.

D.—To section 443 of the said Code the following shall be added, namely :—

“Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section, unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed.”

C.—After section 446 of the said Code the following shall be added, namely :—

“If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor.”

D.—For section 461 of the said Code the following shall be substituted, namely :—

“461.—(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.”

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

THE SCHEDULE.

EXACTMENTS REPEALED.

(See section 2)

Description, number and year.	Title or subject.	Extent of repeal.
Notification by the Government of India, Foreign and Department No. 75 JJ, dated the 25th April 1872.	Rules relative to the Custody and Guardianship of Minors, Idiots and other disqualified persons in the Province of Mysore.	The whole, except Rule 22, and so much of Rule 23 as relates to orders passed under Rule 22, and except so far as may be necessary to give effect to Rule 22.
Act XIV of 1882 as in force in Mysore.	Code of Civil Procedure.	The second paragraph of section 443, and section 464.
Regulation III of 1900.	The Mysore Court Fees Regulation 1900.	Section 28, and Article 9 of Schedule I.

STATEMENT OF OBJECTS AND REASONS.

The law at present in force in regard to the custody and guardianship of minors consists of the Rules sanctioned by the Government of India (Foreign Department) in Notification No. 75 J. dated the 25th April 1872 (with the exception of Rule 22, which applies to lunatics, idiots and other individuals incapacitated by natural infirmity, the provisions relating to minors). These Rules proceed more or less on the lines of (and were probably based on) Acts XL of 1858 and XX of 1864 relating to minors in Bengal and Bombay respectively. These and a number of other local and special Acts were finally repealed in 1890 by Act VIII of 1890, which provided a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India, to whatever creeds or races they might belong.

The Rules of 1872, being found defective in several respects, it is proposed to replace them, so far as they relate to the guardianship of minors, by a Regulation based on the Indian Act VIII of 1890, which is more comprehensive than the Rules aforesaid and comprises many matters not provided for by them.

The subject of the adjudgment of persons to be lunatics, and of the appointment of guardians of their persons and managers of their estates, is one which, it is found, cannot conveniently be dealt with as part of a Regulation concerning the guardianship of minors, and is therefore reserved for separate consideration. In the meantime, so much of the Rules of 1872 as relates to lunatics has to be expressly saved, and this is done in the Schedule.

2. Most of the changes made in the provisions of Act VIII of 1890 in the process of adaptation are verbal alterations that are obviously required. The few that need explanation are referred to below.

References to Courts of Wards and Chartered High Courts have been omitted throughout. *Section 3, clause (1).*—The definition of "minor" here given differs from the corresponding definition in the Indian Act, a definition based on the Indian Majority Act which is not in force in Mysore; but adheres to the provisions of the existing law under which every person is to be "held to be a minor who has not completed the age of 18 years." The Government do not consider that there is anything to be gained by departing from the existing provision of law, and making a distinction (as in the Indian Majority Act) between the age of majority for a minor of whose person or property a guardian has been appointed by a Court of Justice before the minor has attained the age of 18 years, and the age of majority for all other persons. Compare also the definition in section 3 of the Indian Succession Act, and in section 3 of the Mysore Registration Regulation, 1903.

Section 3, clause (4).—The definition of "District Court" given in this clause is taken from Accession Certificate Regulation, VII of 1901.

also is *section 4*, which provides for Courts inferior to a District Court being invested with functions of a District Court under the present Regulation. The existing Rules, it may be noted, allow of a Subordinate Judge being empowered to receive and dispose of applications for the appointment of guardians. (*Vide* provision in Rule 5).

Section 52 of the corresponding Indian Act has been omitted as relating to the Indian Act.

Section 53, *Clause (e)* of Act VIII of 1890 has likewise been omitted, as section 464 of the Code of Procedure as amended by it is inapplicable for the reasons, firstly, that Chapter XX of the Code (relating to suits by or against Foreign and Native Rulers) had been omitted when the Code was applied to Mysore in 1884, and secondly, that there are no local laws in force relating to suits by or against minors or persons of unsound mind. The original section 464 of the Code is also inapplicable in view of the fact that the present Regulation does not contemplate the applicability of Chapter XXVIII to "Wards of Court," and hence is included in the Schedule for repeal along with the second para of section 443.

(147)

Copy of the Regulation incorporating
the corrections made in the light
of the remarks of the Lord Chancellor

Copy as sent to the
Secretary (Rennell) with
Ld of 20 July 09

LEGISLATIVE DEPARTMENT.

The Guardians and Wards Regulation, 190-

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REGULATION NO. OF 190

**A Regulation to consolidate and amend the law relating to
Guardian and Ward.**

Whereas it is expedient to consolidate and amend the law relating to guardian and ward: His Highness the Maharaja is pleased to enact as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement. 1. (1) This Regulation may be called the Guardians and Wards Regulation, 190
(2) It extends to the whole of Mysore; and
(3) It shall come into force on the first day of 190

2. (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Regulation; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Regulation or to the corresponding portion thereof.

Definitions.

3. In this Regulation, unless there is something repugnant in the subject or context,—

(1) "minor" means a person who has not completed the age of eighteen years;
(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:—

(3) "ward" means a minor for whose person or property, or both, there is a guardian:
(4) "District Court," subject to the provisions of section 4 of this Regulation, and to the provisions of section 12 of the Mysore Chief Court Regulation, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge.

(5) "the Court" means the District Court having jurisdiction to entertain an application under this Regulation for an order appointing or declaring a person to be a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides:

(6) "Deputy Commissioner" means the officer in charge of the revenue-administration of a district, and includes any officer whom the Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Deputy Commissioner in any local area, or with respect to any class of persons, for all or any of the purposes of this Regulation:

(7) "European British subject" means an European British subject as defined in the Code of Criminal Procedure, and includes any Christian of European descent: and

(8) "prescribed" means prescribed by rules made by the Chief Court under this Regulation.

4. (1) The Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Regulation, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Regulation upon the District Court, and the provisions of this Regulation relating to the District Court shall apply to such an inferior Court as if it were a District Court

Provided that an appeal from any such order of an inferior Court as is mentioned in section 47 shall lie to the District Court, and not to the Chief Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Regulation from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

if he is not
mentioned in Regn
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majority according
to the law to which
he is subject

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(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5/ (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

(a) by the father of the minor, or,
(b) if the father is dead or incapable of acting, by the mother.
(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

5/ 6. ~~In the case of a minor who is not an European British subject,~~ Nothing in this Regulation shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

Power of the Court to make order as to guardianship.

6/ (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—
(a) appointing a guardian of his person or property, or both, or
(b) declaring a person to be such a guardian, the Court may make an order, accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Regulation.

Persons entitled to apply for order.

8/ An order shall not be made under the last foregoing section except on the application of—
(a) the person desirous of being, or claiming to be, the guardian of the minor, or,
(b) any relative or friend of the minor, or
(c) the Deputy Commissioner of the district or other local area within which the minor ordinarily resides or in which he has property, or
(d) the Deputy Commissioner having authority with respect to the class to which the minor belongs.

9/ (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application, in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

9/ 10. (1) If the application is not made by the Deputy Commissioner, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint.

Form of application.
and stating, so far as can be ascertained,—

(a) the name, sex, religion, date of birth and ordinary residence of the minor;
(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;
(c) the nature, situation and approximate value of the property, if any, of the minor;
(d) the name and residence of the person having the custody or possession of the person or property of the minor;
(e) what near relations the minor has, and where they reside;
(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

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(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor; and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Deputy Commissioner, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

104. If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

Procedure on admission of application.

(a) to be served in the manner directed in the Code of Civil Procedure on—

(i) the parents of the minor if they are residing in Mysore,

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the Court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the Chief Court under this Regulation, thinks fit.

12. (1) The Court may direct that the person, if any, having the custody of the minor

Power to make interlocutory order for production of minor and interim protection of person and property.

shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

12-13. On the day fixed for the hearing of the application, as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Hearing of evidence before making of order.

13-14. If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself, and shall report the case to the Chief Court, and the Chief Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

Simultaneous proceedings in different Courts.

4 45: (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

Appointment or declaration of several guardians.

(2) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child has, by will or other instrument to take effect on

her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(2) Separate guardians may be appointed or declared of the person and of the property of a minor.

(3) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

15 16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

16 17. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian, and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects, adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but, other things being equal, if the minor is a male of tender years or a female, the minor should, be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

17 18. Where a Deputy Commissioner is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

18 19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person of a minor in certain cases.

(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

(b) subject to the provisions of this Regulation with respect to European British subjects, of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor.

CHAPTER III.

19 DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General

20 (1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will of other instrument, if any, by which he was appointed, or by this Regulation, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

21 A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

22 (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Government, by general or special order, directs.

22
23. A Deputy Commissioner appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the Government or of such authority as the Government, by notification in the official Gazette, appoints in this behalf.

Guardian of the Person.

23
24. A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

24
25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

25
26. (1) A guardian of the person appointed or declared by the Court, unless he is the Deputy Commissioner or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

26
27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

27
28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Regulation been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

28
29. Where a person other than a Deputy Commissioner, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—
(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

29
30. A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

30
31. (1) Permission to the guardian to do any of the acts mentioned in section 29, shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

- (a) that a sale shall not be completed without the sanction of the Court;
 - (b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Regulation by the Chief Court, directs;
 - (c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;
 - (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.
- (4) Before granting permission to a guardian to do an act mentioned in section 33, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

13/32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Deputy Commissioner, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

33. 34. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Deputy Commissioner, he shall—

(a) if so required by the Court, give a bond as nearly as may be in the prescribed form, to the Judge of the Court, to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(d) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward, as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

34. 35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

Suit against guardian where administration bond was taken.

35. 36. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of

Suit against guardian where administration bond was not taken.

what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Regulation.

36. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

37. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

38. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :—

- (a) for abuse of his trust;
- (b) for continued failure to perform the duties of his trust;
- (c) for incapacity to perform the duties of his trust;
- (d) for ill-treatment, or neglect to take proper care, of his ward;
- (e) for contumacious disregard of any provision of this Regulation or of any order of the Court;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;
- (g) for having an interest adverse to the faithful performance of his duties;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency;
- (j) by reason of the guardianship of the guardian ceasing or being liable to cease under the law to which the minor is subject.

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Regulation or not, shall not be removed—

- (a) for the cause mentioned in clause (g), unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or
- (b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

39. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Deputy Commissioner and the Government approves of his applying to be discharged, the Court shall in any case discharge him.

40. (1) The powers of a guardian of the person cease—

- (a) by his death, removal or discharge;
- (b) by the ward ceasing to be a minor;
- (c) in the case of a female ward, by her marriage to a husband, who is not unfit to be guardian of her person, or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or
- (d) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

- (a) by his death, removal or discharge;
- (b) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

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42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

Appointment of successor to guardian dead, discharged or removed.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

42
(1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

Orders for regulating conduct or proceedings of guardians and enforcement of those orders.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Deputy Commissioner who is, as such, a guardian.

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44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for contumacy.

45. (1) In the following cases, namely:—

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 18, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees; and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

46. (1) The Court may call upon the Deputy Commissioner, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Regulation and treat the report as evidence.

Reports by Deputy Commissioner and subordinate Courts.

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(2) For the purpose of preparing the report the Deputy Commissioner or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.

Orders appealable.

46. An appeal shall lie to the Chief Court from an order made by a District Court,—
- (a) under section 26, appointing or declaring or refusing to appoint or declare a guardian; or,
- (b) under section 2, sub-section (3), returning an application; or
- (c) under section 26, making or refusing to make an order for the return of a ward to the custody of his guardian; or,
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,
- (e) under section 26 or section 29, refusing permission to a guardian to do an act referred to in the section; or
- (f) under section 33, denning, restricting or extending the powers of a guardian; or,
- (g) under section 33, removing a guardian; or,
- (h) under section 40, refusing to discharge a guardian; or,
- (i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order; or,
- (j) under section 44 or section 45, imposing a penalty.

Finality of other orders.

47. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Regulation shall be final, and shall not be liable to be contested by suit or otherwise.

Costs.

48. The costs of any proceedings under this Regulation including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the Chief Court under this Regulation, be in the discretion of the Court in which the proceeding is had.

49. (1) In addition to any other power to make rules conferred expressly or impliedly by this Regulation, the Chief Court may from time to time make rules consistent with this Regulation,—

- (a) as to the matters respecting which, and the time at which, reports should be called for from Deputy Commissioners and subordinate Courts;
- (b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;
- (c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;
- (d) as to the circumstances in which such requisitions as are mentioned in clauses (a) (b), (c) and (d) of section 34 should be made;
- (e) as to the preservation of statements and accounts delivered and exhibited by guardians;
- (f) as to the inspection of those statements and accounts by persons interested;
- (g) as to the custody of money, and securities for money, belonging to wards;
- (h) as to the securities on which money belonging to wards may be invested;
- (i) as to the education of wards for whom guardians, not being Deputy Commissioners, have been appointed or declared by the Court; and,
- (j) generally, for the guidance of the Courts in carrying out the purposes of this Regulation.

(2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

50. A guardian appointed by or holding a certificate of administration from a Civil Court under any enactment repealed by this Regulation shall, save as may be prescribed, be subject to the provisions of this Regulation, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

Amendment of Chapter XXXI of the Code of Civil Procedure.

51. Chapter XXXI of the Code of Civil Procedure shall be amended as follows, namely:—

A.—To section 440 of the said Code the following shall be added, namely:—

"If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after

hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so.

R — To section 443 of the said Code the following shall be added, namely :—

“ Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section, unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed ”

— After section 443 of the said Code the following shall be added, namely :—

“ If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor ”

D — For section 461 of the said Code the following shall be substituted, namely :—

461 (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—

- (a) by way of compromise before decree or order, or
- (b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority, to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2)

Description, number and year.	Title or subject.	Extent of repeal.
Notification by the Government of India, Foreign Department, No. 75 J., dated the 25th April 1872.	Rules relative to the Custody and Guardianship of Minors, Idiots and other disqualified persons in the Province of Mysore.	The whole, except Rule 22 and so much of Rule 23 as relates to orders passed under Rule 22, and except so far as may be necessary to give effect to Rule 22.
Act XIV of 1882 as in force in Mysore.	Code of Civil Procedure.	The second paragraph of section 443, and section 464.
Regulation III of 1900	The Mysore Court Fees Regulation 1900.	Section 28 and Article 9 of Schedule I.

STATEMENT OF OBJECTS AND REASONS.

The law at present in force in regard to the custody and guardianship of minors consists of the Rules sanctioned by the Government of India (Foreign Department) in Notification No. 75 J. dated the 25th April 1872 (with the exception of Rule 22, which applies to lunatics, idiots and other individuals incapacitated by natural infirmity, the provisions relating to minors). These Rules proceed more or less on the lines of (and were probably based on) Acts XL of 1858 and XX of 1864 relating to minors in Bengal and Bombay respectively. These and a number of other local and special Acts were finally repealed in 1890 by Act VIII of 1890, which provided a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India, to whatever creeds or races they might belong.

The Rules of 1872 being found defective in several respects, it is proposed to replace them, so far as they relate to the guardianship of minors, by a Regulation based on the Indian Act VIII of 1890, which is more comprehensive than the Rules aforesaid and comprises many matters not provided for by them.

The subject of the adjudgment of persons to be lunatics, and of the appointment of guardians of their persons and managers of their estates, is one which, it is found, cannot conveniently be dealt with as part of a Regulation concerning the guardianship of minors, and is therefore reserved for separate consideration. In the meantime, so much of the Rules of 1872 as relates to lunatics has to be expressly saved, and this is done in the Schedule.

2. Most of the changes made in the provisions of Act VIII of 1890 in the process of adaptation are verbal alterations that are obviously required. The few that need explanation are referred to below.

References to Courts of Wards and Chartered High Courts have been omitted throughout. *Section 3, clause (1).*—The definition of "minor" here given differs from the corresponding definition in the Indian Act, a definition based on the Indian Majority Act which is not in force in Mysore; but adheres to the provisions of the existing law* under which every person is to be "held to be a minor who has not completed the age of 18 years." The Government do not consider that there is anything to be gained by departing from the existing provision of law, and making a distinction (as in the Indian Majority Act) between the age of majority for a minor of whose person or property a guardian has been appointed by a Court of Justice before the minor has attained the age of 18 years, and the age of majority for all other persons. Compare also the definition in section 3 of the Indian Succession Act, and in section 3 of the Mysore Registration Regulation, 1903.

Section 3, clause (4).—The definition of "District Court" given in this clause is taken from the Succession Certificate Regulation, VII of 1901.

So also is *section 4*, which provides for Courts inferior to a District Court being invested with the functions of a District Court under the present Regulation. The existing Rules, it may be remarked, allow of a Subordinate Judge being empowered to receive and dispose of applications for the appointment of guardians. (*Vide* proviso to Rule 5).

Section 56 of the corresponding Indian Act has been omitted as relating to the Indian Majority Act.

Section 53, *Clause (c)* of Act VIII of 1890 has likewise been omitted, as section 464 of the Civil Procedure Code as amended by it is inapplicable for the reasons, firstly, that Chapter XXVIII of the Code (relating to suits by or against Foreign and Native Rulers) had been omitted when the Code was applied to Mysore in 1884, and secondly, that there are no local laws in force relating to suits by or against minors or persons of unsound mind. The original section 464 of the Code is also inapplicable in view of the fact that the present Regulation does contemplate the applicability of Chapter XXVIII to "Wards of Court," and hence is included in the Schedule for repeal along with the second para of section 443.

~~XXXI~~

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Letter No. 4443.
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Letter

7/5/10

Bangalore,
11th April 1910.
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From

The Registrar of the
Chief Court of Mysore.

To

The Secretary to the Government of Mysore,
General and Revenue Departments.

Sir,

Adverting to your letter No. 2649 dated
8th March 1910 I am directed to state that the
number of applications made to the several
courts in the state for the certificates of admin-
stration under the rules relating to the cus-
tody and guardianship of minors for the past
5 years is 112 and that fees collected therefor
under the Court Fees Regulation is Rs. 1008/1.

I have the honor to be
Sir.

Your most obedient servant

Sd/-
Registrar.

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N Regis 24/11/1910-11
DRAFT. Serial 1/10

To

The First Assistant to the Hon'ble
the Resident in Mysore.

Letter No. 596 of 23rd December 1910. per
the Secretary to Govt, Mysore. Serial 1/10

(Sir,)

In forwarding herewith a copy

of a Bill to consolidate and amend the
law relating to Guardians and Wards in
Mysore, I am directed to state as fol-
lows:-

2. The law at present in force in re-
gard to the custody and guardianship of
Minors consists of the Rules sanctioned
by the Government of India (Foreign
Department) in Notification No. 75.J
dated the 25th April 1872, with the ex-
ception of Rule 22, which applies the
provisions relating to minors to luna-
tics, idiots and other individuals in-
capacitated by natural infirmity. These

rules

Enclosure
7/11/1910

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rules proceed, more or less, on the

lines of, and were probably based on,

Act[✓] XL of 1858 and XX[✓] of 1864 relating

to Minors in Bengal and Bombay, res-

pectively. These and other local and

special Acts were finally repealed in

British India by Act VIII of 1890,

which provided a Law of Guardian and

Ward applicable, as far as possible,

to all classes of people in British

India.

3. The Rules of 1872 being found de-

fective in certain respects, it was

thought desirable ^{to replace} them so far as they

relate to the Guardianship of Minors

by a Regulation, based on the Indian

Act VIII of 1890, which is more compre-

hensive than the aforesaid rules and

comprised many matters not provided for

by them.

4. A Bill was, accordingly, prepared

and placed before the Legislative

Council at the meeting held on the

13th January 1910, when it was referred

to

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(30)

to a Select Committee of that body for consideration and report. The report of the Select Committee and the Bill as amended by them were considered at the Meeting of the Legislative Council held on the 22nd November 1910, and a copy of the Bill as adopted by the Council is herewith enclosed.

5. Though based on the Indian Act VIII of 1890, the Bill departs from it in the following particulars:

(i) Minor. The definition of the word given in the Bill differs from the corresponding definition in the Indian Act, ^{which latter} ~~a definition~~ based on the Indian Majority Act, which is not in force in Mysore; but adheres partly to the provisions of the existing law (Rule 2 of the Rules of 1872) under which every person is to be held a minor who has not completed the age of 18 years, ^{which is also} the limit fixed in various Regulations in force in the State (Vide , The Mysore Registration Regulation, Section 3; The Village Offices Regulation, Section 18)

(31)

The Durbar do not consider that there is anything to be gained by departing from the existing provision of Law widely and making a distinction (as in the Indian Majority Act) between the age of majority ^{of} ~~for~~ a minor ^{for} ~~of~~ whose person or property a guardian has been appointed by a Court of Justice before the minor has attained the age of 18 years, and the age of majority for all other persons.

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The definition now given prescribes to all persons domiciled in Mysore, a uniform limit, viz., 10 years in consonance with the accepted ideas and the prevailing practice in the State, while giving to persons temporarily residing in the country the benefit of their ^{own} personal law. It will be observed that, as a consequence, the specific reference contained in the British Indian Act to European British subjects has been omitted from the Bill. The object of the Bill being

merely

merely to empower Courts to afford

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certain measure of protection to the
interests of minors, its provisions
cannot have any effect in determining
the status or capacity of such persons
which will be governed by the personal
law applicable to them in accordance
with the principles recognised in Pri-
vate International Law. The same rules
will become applicable for the purpose
of affording minors the protection of
the provisions of this Bill, in so far
as such protection may become necessary
on account of their sojourn in Mysore,
or having property there. It is believ-
ed that the results will be to save
for the protection of these minors all
the laws to which they are subject by
reason of their domicile, subject only
to such exemptions, if any, as may be
established by recognised authorities.

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(ii) Clause 4. This is new and
adopted from the Mysore Succession Cer-
tificate Regulation, VII of 1901, ~~Stat-~~

thru

in view of the greater
convenience resulting to
the public residing at
some distance from a
District or a Subordinate
Judge's Court the bill.

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~~to be~~ and provides for Courts in-
fradeⁿ ferior to a District Court being invest-
ed with the functions of ~~a District~~ ^{that} Court. It may be remarked that the ex-
isting rules (proviso to Rule 5) allow
of a Subordinate Judge being empowered
to receive and dispose of applications
for the appointment of Guardians.

Considering the fact that, in Brit-
ish India, appeals in all cases under
the Guardians and Wards Act lie direct-
ly to the High Courts, it has been con-
sidered that a similar procedure should

Even though the jurisdiction may
be exercised by Courts in-
frade to a District Court.

be adopted in Mysore. Proviso to Sub-
Section 2 and Sub-section 3 of ~~Section~~ ^{Chap} ~~Section~~ ^{cl.}
~~of the Succession Certificate Regu-~~
~~lation~~ have accordingly been omitted.

(iii) Clause 47. In the corres-
ponding Section of the British Indian
Act, provision is made only for a re-
vision of the orders passed by a Court
under the Act. In the Bill it was
thought desirable that provision should
be made for a review also of such ord-
ers.

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(31.)

(iv) As the Sections of the Civil Procedure Code intended to be amended by Section 53 of the British Indian Act have been incorporated in their amended form in the new Civil Procedure Code Bill about to become law, this section has been omitted from the Bill, and as the Indian Majority Act is not in force in Mysore, Section 52 of the British Indian Act has also been omitted.

Made in the Hall

6. The other changes are either of a verbal or consequential character and call for no remarks.

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7. I am now to request that the sanction of the Government of India may be obtained early for the Bill being passed into law, as it is the intention of the Durbar that the Bill should come

into force at the same time as the *Code of* Civil Procedure ~~Code~~ Bill. *was on the 7th July 1911.*

17 Dec 11

I have the honor to be, &c.,

CSB 9/12/10

Offg. Secretary to Government.

SRM/128.

20/11/12

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Letter No. 596

18-2-11

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18-2-11

18th Feb 1911

FROM

P. B. Warburton, Esq., I. C. S.,

First Assistant to the Resident in Mysore.

To

The Dewan of Mysore.

Dated Bangalore, 18th February 1911.

SIR,

I am directed to acknowledge the receipt of Mr. Bala-sundaram Iyer's letter No. 596, dated the 23rd December 1910, forwarding, for the sanction of the Government of India, a draft of a Bill which the Mysore Durbar propose to enact to consolidate and amend the law relating to -- Guardians and Wards in the Mysore State.

2. In reply, I am to state that the Governor General in Council has accorded his consent to the draft Bill on the understanding that he retains over it the power and authority which vests in him by virtue of Article 19 of the Instrument of Transfer.

I have the honour to be,

Sir,

Your most obedient servant,

P. B. Warburton

First Assistant Resident.

Man

K.M.
17.2.11.

NOTIFICATION.

~~No. 87 L. C. dated 15th September 1909.~~

~~Under rule 31 of the rules relating to the conduct of business of the Mysore Legislative Council, the following Bill together with a statement of objects and reasons is published for general information.~~

By Order.

S. HIRIYANNAIYA

Secy., Mysore Legislative Council

LEGISLATIVE DEPARTMENT.

The Guardians and Wards Bill.

as finally passed by the Legislative Council, and as forwarded to the Government for sanction

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THE SCHEDULE.—ENACTMENTS REPEALED.

A Bill to consolidate and amend the law relating to Guardian and Ward.

Whereas it is expedient to consolidate and amend the law relating to guardian and ward; His Highness the Maharaja is pleased to enact as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1 (1) This Regulation may be called the Guardians and Wards Regulation, 1911.

(2) It extends to the whole of Mysore; and

(3) It shall come into force on the first day of *July* 1911

2. (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Regulation; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Regulation or to the corresponding portion thereof.

3. In this Regulation unless there is something repugnant in the subject or context —

Definitions.

(1) "minor" means a person who has not completed the age of eighteen years or, if he is not domiciled in Mysore, has not attained majority according to the law to which he is subject:

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:

(3) "ward" means a minor for whose person or property, or both, there is a guardian:

(4) "District Court," ~~subject to the provisions of Section 4 of this Regulation, and to the provisions of Section 12 of the Mysore Chief Court Regulation, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge:~~

(5) "the Court" means the District Court having jurisdiction to entertain an application under this Regulation for an order appointing or declaring a person to be a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides:

(6) "Deputy Commissioner" ~~means the chief officer in charge of the revenue administration of a district, and includes any officer whom the Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Deputy Commissioner in any local area, or with respect to any class of persons, for all or any of the purposes of this Regulation~~

(7) "prescribed" means prescribed by rules made by the Chief Court under this Regulation.

4. (1) The Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Regulation, ~~and may cancel or vary any such notification.~~

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Regulation.

includes a court invested with the functions of a District Court under the provisions of Section 6 of the Regulation and also the Chief Court when exercising original civil jurisdiction under Section 12 of the Mysore Chief Court Regulation;

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(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Regulation upon the District Court, and the provisions of this Regulation relating to the District Court shall apply to such an inferior Court as if it were a District Court:

~~Provided that an appeal from any such order of an inferior Court as is mentioned in Section 46 shall lie to the District Court, and not to the Chief Court.~~

~~(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by Section 647 of that Code, be final.~~

(3) (4) The District Court may withdraw any proceedings under this regulation from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings *on transfer.*

(4) (5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(5) (6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Court.

for the disposal of Court for trial the same will be done.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

In the case of a minor

5. Nothing in this Regulation shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

Power of the Court to make order as to guardianship.

6. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

- (a) appointing a guardian of his person or property, or both, or
 - (b) declaring a person to be such a guardian,
- the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Regulation.

Persons entitled to apply for order.

All order shall not be made under the last foregoing section except on the application of—

- (a) the person desirous of being, or claiming to be, the guardian of the minor, or
- (b) any relative or friend of the minor, or
- (c) the Deputy Commissioner of the district or other local area within which the minor ordinarily resides or in which he has property, or
- (d) the Deputy Commissioner having authority with respect to the class to which the minor belongs.

3. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction to entertain application. of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

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(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if, in its opinion, the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

9. (1) If the application is not made by the Deputy Commissioner, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint, and stating, so far as can be ascertained,—

Form of application.

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Deputy Commissioner, it shall be by letter addressed to the Court and forwarded, by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

10. If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

Procedure on admission of application.

(a) to be served in the manner directed in the Code of Civil Procedure on—

(i) the parents of the minor if they are residing in Mysore,

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

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(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the Court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the Chief Court under this Regulation, thinks fit.

11. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

Power to make interlocutory order for production of minor and interim protection of person and property.

(2) If the minor is a female who ought not to be compelled to appear in public the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

12. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Hearing of evidence before making of order.

13. If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself, and shall report the case to the Chief Court, and the Chief Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

Simultaneous proceedings in different Courts.

14. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

Appointment or declaration of several guardians.

(2) Separate guardians may be appointed or declared of the person and of the property of a minor.

(3) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

15. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

16. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

Matters to be considered by the Court in appointing guardian.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) The Court shall not appoint or declare any person to be a guardian against his will.

17. Where a Deputy Commissioner is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Appointment or declaration of Deputy Commissioner in virtue of office.

Guardian not to be appointed by the Court in certain cases.

18. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person—
(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

(b) except in accordance with the law to which he is subject, of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor.

CHAPTER III

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

19. (1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Regulation, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor and generally all transactions between them while the influence of the guardian still lasts or is recent.

20. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

Capacity of minors to act as guardians.

21. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

Remuneration of guardian.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Government, by general or special order, directs.

22. A Deputy Commissioner appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the Government or of such authority as the Government, by notification in the official Gazette, appoints in this behalf.

Control of Deputy Commissioner as guardian.

Guardian of the Person.

23. A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

Duties of guardian of the person

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24. (1) If a ward leaves or is removed from the custody of a guardian or his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

25. (1) A guardian of the person appointed or declared by the Court, unless he is the Deputy Commissioner or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

26. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

27. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Regulation been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

28. When a person other than a Deputy Commissioner, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

29. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

30. (1) Permission to the guardian to do any of the acts mentioned in section 28 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

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(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

- (a) that a sale shall not be completed without the sanction of the Court;
- (b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Regulation by the Chief Court, directs;
- (c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;
- (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 28, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

31. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Deputy Commissioner, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

32. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

33. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Deputy Commissioner, he shall,—

(a) if so required by the Court, give a bond as nearly as may be in the prescribed form, to the Judge of the Court, to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(d) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs: and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him; and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward, as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

34. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

35. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Regulation.

36. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

37. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

38. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely:—

- (a) for abuse of his trust;
- (b) for continued failure to perform the duties of his trust;
- (c) for incapacity to perform the duties of his trust;
- (d) for ill-treatment, or neglect to take proper care, of his ward;
- (e) for contumacious disregard of any provision of this Regulation or of any order of the Court;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;
- (g) for having an interest adverse to the faithful performance of his duties;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court
- (i) in the case of a guardian of the property, for bankruptcy or insolvency
- (j) by reason of the guardianship of the guardian ceasing or being liable to cease, under the law to which the minor is subject:

Over XXXII
ml. 4, sub
ml. 2) of the
Code of Civil

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Provided that a guardian appointed by will or other instrument, whether he has been declared under this Regulation or not, shall not be removed—

(a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

Discharge of guardian.

39. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Deputy Commissioner and the Government approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of authority of guardian.

40. (1) The powers of a guardian of the person cease—

(a) by his death, removal or discharge

(b) by the ward ceasing to be a minor;

(c) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person, or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or,

(d) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

(a) by his death, removal or discharge;

(b) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

41. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to

Appointment of successor to guardian dead, discharged or removed.

be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

42. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

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(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

*rule 10 mls
2 of order
XXIX*
(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under ~~section 492~~ ~~on section 493~~ of the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Deputy Commissioner who is, as such, a guardian.

43. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 25, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for contumacy.

44. (1) In the following cases, namely:—

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 11, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 24, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 33, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 40, sub-section (3).

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

45. (1) The Court may call upon the Deputy Commissioner, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Regulation and treat the report as evidence.

Report by Deputy Commissioner and subordinate Courts.

(2) For the purpose of preparing the report the Deputy Commissioner or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.

Orders appealable.

46. An appeal shall lie to the Chief Court from an order made by a District Court,—

(a) under section 6, appointing or declaring or refusing to appoint or declare a guardian; or,

- (b) under section 3, sub-section (5), returning an application; or
- (c) under section 24, making or refusing to make an order for the return of a ward to the custody of his guardian; or,
- (d) under section 25, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto or,
- (e) under section 27, or section 28, refusing permission to a guardian to do an act, referred to in the section; or,
- (f) under section 31, defining, restricting or extending the powers of a guardian; or,
- (g) under section 33, removing a guardian; or,
- (h) under section 39, refusing to discharge a guardian; or,
- (i) under section 42, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order or
- (j) under section 43 or section 44, imposing a penalty.

47. Save as provided by the last foregoing section and by sections 622 of the Code of Civil Procedure, an order made under this Regulation shall be final, and shall not be liable to be contested by suit or otherwise.

48. The costs of any proceedings under this Regulation including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the Chief Court under this Regulation be in the discretion of the Court in which the proceeding is had.

49. (1) In addition to any other power to make rules conferred expressly or impliedly by this Regulation, the Chief Court may from time to time make rules consistent with this Regulation.—

(a) as to the matters respecting which, and the time at which, reports should be called for from Deputy Commissioners and subordinate Courts.

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 27 and 28;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 33 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians;

(f) as to the inspection of those statements and accounts by persons interested;

(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Deputy Commissioners, have been appointed or declared by the Court; and,

(j) generally, for the guidance of the Courts in carrying out the purposes of this Regulation.

(2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

50. A guardian appointed by or holding a certificate of administration from a Civil Court under any enactment repealed by this Regulation shall, save as may be prescribed, be subject to the provisions of this Regulation, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

Amendment of Chapter XXXI
of the Code of Civil Procedure.

51. Chapter XXXI of the Code of Civil Procedure shall be amended as follows, namely:—

A.—To section 440 of the said Code the following shall be added, namely:—

“If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so.

B.—To section 443 of the said Code the following shall be added, namely:—

“Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section, unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed.”

C.—After section 446 of the said Code the following shall be added, namely:—

“If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor.”

D.—For section 461 of the said Code the following shall be substituted, namely:—

“461. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—
Receipt by next friend or guardian *ad litem* of property under decree for minor.

(a) by way of compromise before decree or order, or

(b) under a decree or order in favor of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.”

THE SCHEDULE

ENACTMENTS REPEALED.

(See section 2.)

Description, number and year.	Title or subject.	Extent of repeal.
Notification by the Government of India, Foreign Department No. 75—J., dated the 25th April 1872.	Rules relating to the Custody and Guardianship of Minors, Idiots and other disqualified persons in the Province of Mysore.	The whole, except Rule 22 and so much of Rule 23 as relates to orders passed under Rule 22, and except so far as may be necessary to give effect to Rule 22.
Act XIV of 1882 as in force in Mysore.	Code of Civil Procedure	The second paragraph of section 443, and section 461.
Regulation III of 1900	The Mysore Court Fees Regulation, 1900.	Section 28, and Article 9 of Schedule I

99

G.R.S. 28.]

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File No. 24-10

Serial No. 3

Diary No. of letter replied to

Proceedings of the Government of His Highness
the Maharaja of Mysore

GENERAL AND REVENUE
SECRETARIAT.

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READ--

19

Date of issue 15-5-11

Signed by Mr S. A.

ORDER TELETYPE.—No. 3135/244624-10. Dated
15th May 1911. To Mr. [unclear], Mysore.
Ordered that the [unclear] be
consolidated and amend the law
relating to Guardians & wards
in Mysore which received the
assent of His Highness the Maharaja

over

SUBJECT.

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G.R.S. 26]

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Diary No. of letter replied to

General and Revenue Secretariat

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Date of issue

8-6-1911

Signed by

Mrs Ramaswamy

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Ten and

SUBJECT.

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SN

SN (11)

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Offs. Secretary to Gov

38
Legis File No. 247
Serial No. 4

Letter No 1073 dated 7th

8th June 11 from the Secretary
General of the Govt of Madras
To

The J. A. Resident

Bangalore

Sir

I am directed to forward
herewith a copy of Reg. V of
1911 a Reg. to consolidate
and amend the law relating
to Guardian and Ward with
9 spare copies and to request
that a copy may, as usual,
be forwarded to His Highness
the Naizam Government

I have over. S.